SHAKER COLLECTION

Item 302

Legal documents concerning lawsuits:
Daniel Boyd and Ithamar Johnson vs
Nathan Sharp, et al, Union Village,
Ohio
The Shaker Society vs Gass, Banta, et al,
Pleasant Hill, Ky., undated

Know all men by these presents, that Whereas I Nathan Sharp of the County of Warren and State of Ohio, being a member of the religious Society or Church of Believers, at Union Village in the county & State aforesaid, known by the name of Shakers; and having been duly chosen and appointed a trustee of the temporalities of the Church aforesaid, in connection with others, whose names are hereinafter mentioned, and in pursuance of my said office of Trustee, having received at sundry times, various deeds or releases of lands situate in the County of Warren aforesaid, executed to me & others whose names are respectively included as Trustees, by sundry persons, that is to say,— One certain deed executed by Hezekiah Worley of Warren County aforesaid bearing date January 15th 1812, and conveying to Peter Pease, John Wallace and Nathan Sharp, Trustees 128 acres and 130 poles, being a remainder of the North west quarter of section No. 24 in the 4th township and 3d military Range: And another certain deed executed by Francis Beedle of Warren County aforesaid, bearing date January 15th 1812, and conveying to Peter Pease, John Wallace & Nathan Sharp Trustees 160 acres of land being a part of section No. 5 in the 3d township and 3d Range: And another certain deed executed by Samuel Sering of Warren County aforesaid, bearing date April 14th 1812, and conveying to Peter Pease, John Wallace & Nathan Sharp Trustees 130 acres of land, being a part of section No. 36, in the 4th township and third Range: And another certain deed executed by Amos Valentine of Warren County aforesaid, bearing date January 15th 1812 and conveying to Peter Pease, John Wallace and Nathan Sharp Trustees 260 acres, part of section 6th in the third township and third Range; also 100 acres being a part of section No. 19 3d township & 4th Range; also 60 acres on the west end of the south half of section 36, 2d township & 4th range &c. And another certain deed executed by Samuel Holloway of Warren County aforesaid, bearing date April 13th 1812, and conveying to Peter Pease, John Wallace & Nathan Sharp Trustees 80 acres being a part of section No. 25, in the 4th township and 3d or meletary Range: And another certain deed executed by Elijah Davis of Warren county aforesaid, bearing date April 13th 1812, and conveying to Peter Pease, John Wallace & Nathan Sharp Trustees 50 acres, being a part of section No. 22 in the 4th township and 3d Range: And another certain deed executed by Joseph Joseph Patterson of Warren County aforesd, bearing date April 13th 1812, and conveying to Peter Pease, John Wallace & Nathan Sharp Trustees 95 acres lying and being in the South half of section No. 36, 4th township & 3d Range; And another certain deed executed by Peter Pease of Warren county aforesd, bearing date January 14th 1812, and conveying to Peter Pease, John Wallace & Nathan Sharp Trustees 100 acres, being a part of section No. 19, second township and fourth Range: and another certain deed executed by David Cory of Warren county aforesaid, bearing date January 14th 1812, and conveying to Peter Pease, John Wallace & Nathan Sharp trustees, 50 acres, being a part of the east half of section No. 23, 4th township and third or military Range: And another certain deed executed by Jonathan Davis of Warren county aforesd bearing date April 13th 1812, and conveying to Peter Pease, John Wallace and Nathan Sharp trustees, 154 acres 144 poles part of section No. 35, fourth township and third Range: And three other several deeds executed by William Cummins of Warren county aforesd, the first bearing date March 21st 1812, and conveying to Peter Pease, John Wallace & Nathan Sharp Trustees, 21 acres and 70 poles being a part of section No. 23, 4th township & 3d Range; the second bearing date October 31st 1818, and conveying to Peter Pease & Nathan Sharp Trustees five and a half acres being a part of the aforesd section; the 3d bearing date February 15th 1826, and conveying to Nathan Sharp & Daniel Boyd Trustees Eight acres, part of the aforesd section No. 23.— And another certain deed executed by William Davis of Warren county aforesd, bearing date May 25, 1815, and conveying to Peter Pease, John Wallace and Nathan Sharp Trustees one hundred acres, being a part of section No. 35 fourth township and 3d range: And another certain deed executed by Stephens Clark of Preble county and State aforesaid, bearing date February 28. 1816, and conveying to Peter Pease,

John Wallace and Nathan Sharp fifty acres of land situated in the North west corner of section No 23, 4th township and third range: And another certain deed executed by Abner Enoch of Butler county and state aforesaid, bearing date March 22d 1819, & conveying to Peter Pease & Nathan Sharp Trustees 63 acres, being a part of the south East quarter of section No 36, 4th township and third range: And another certain deed executed by Abel Seymour, of Warren county aforesaid, bearing date April 6. 1819, and conveying 160 acres being the north west quarter of section No 36 aforesaid: And another certain deed or conveyance executed by Richard & Stephen Munson trustees of the church at New Lebanon in the county of Columbia and state of New york, bearing date August 16th 1819 and conveying to Peter Pease, Nathan Sharp and Lewis Valentine Trustees the south west and North East and south East quarters of section No. 24 in the 4th township and third or military range; also 167 ¼ acres lying in the south East quarter of section No 25, Third township and fourth Range; also 30 acres lying on the north end of the north west quarter of section No 23, fourth township and third range; And another certain deed executed by the aforesaid Peter Pease, residing at the time being, at New Lebanon aforesaid, dated December 25th 1826, and conveying to Nathan Sharp and Lewis Valentine Trustees, all those certain tracts or parcels of land before described, with the appurtenances, together with all or any lands, tenements or hereditaments, in the state of Ohio to which he the said Peter Pease held right, title or claim as trustee for the Society aforesaid: And another certain deed executed by Isaac Morris of Warren county aforesaid, bearing date the fifteenth day of august 1826, and conveying to Nathan Sharp, John Babbit & Saml Parkhurst Trustees 123 acres being a part of section No. 19 in the third township & fourth range: And another certain deed or release executed by John Babbit & Saml Parkhurst trustees aforesaid, bearing date February 25. 1829, and conveying to Nathan Sharp and Daniel Boyd trustees, 127 ¼ acres it being the aforesaid tract conveyed by Isaac Morris as aforesaid, including four & a fourth acres purchased from Henry Rogers: And also a certain deed executed by the said Henry Rogers of Warren county, bearing date August 19th 1826. and conveying to Nathan Sharp, John Babbet and Saml Parkhurst the aforesaid four and a quarter acres of land; also another deed executed by the said Rogers, bearing date September 22d. 1825, and conveying to Nathan Sharp & Daniel Boyd trustees 13 acres and 67 hundredths, being part of section No. 19 aforesaid; also another certain deed executed by William Drake of Warren county aforesaid, bearing date May 31st 1822, and conveying to Nathan Sharp and Lewis Valentine trustees Twelve acres being a part of section No. 19 aforesaid; also another certain deed executed by Jacob Longstreth administrator to the estate of John Wall deceased, of Warren county aforesaid, bearing date April 24th 1820 and conveying to Nathan Sharp and Daniel Boyd trustees 91 acres being part of section No 19. aforesaid: And another certain deed executed by Aaron Trimbles and Rebecca his wife of Clark county & State aforesaid, bearing date August 3. 1822, and conveying to Nathan Sharp and Daniel Boyd trustees 60 acres being part of section No 6 in the third township of the military range: And another certain deed executed by Mary Manning of Warren county aforesaid bearing date october 4th 1824, and conveying to Nathan Sharp and Daniel Boyd & Trustees sixty six & a fourth acres, part of section No. 18. in the 4th township & 3d or military range; And another certain deed executed by Samuel Kain and Mary his wife of the county of Butler and State aforesaid, bearing date March 23d 1825, and conveying to Nathan Sharp and Daniel Boyd trustees 85 acres being part of Section No. 18. aforesaid: and another certain deed executed by Michal Brown and Esther his wife of Warren county aforesaid, bearing date February 14th 1824. and conveying to Nathan Sharp & Danl Boyd trustees one hundred and seventy-two acres, being part of section No. 35 fourth township & third range: And another certain deed executed by Barachal Dunn of Hamilton county & state aforesaid bearing date and conveying to Peter Pease, John Wallace & Nathan Sharp

Trustees the whole of section N.° 30 in the 4th township, 3 or military range; as by the several deeds, releases or conveyances aforesaid, reference being thereunto had, may more fully appear: and having also in posession as Trustee in connection with others, as aforesaid, the personal property belonging to the Church aforesd, all which property & interest real & personal is held by the Trustees of said Church or Community for the exclusive and entire use and benefit of the members of the said Church or Community jointly, as by the Constitution or Covenant of the said Church, reference being thereunto had, may also more fully appear: And whereas the several tenements and premises, in the aforesd deeds or releases, mentioned and described, were purchased and paid for with monies belonging to the Church or society aforesaid, and for the joint use and benefit thereof, and are now in their actual posession and occupancy, but the particular uses & trusts for which intended by the purchases, are not fully specified in the said deeds or releases; and whereas it is proper that the uses and purposes for which the said purchases were made, should be clearly and explicitly ascertained and defined, according to the true intent and meaning of the several parties interested therein; And whereas, by reason of the departure of the aforesaid John Wallace from the said Society, and the decease of the said Peter Pease, I the said Nathan Sharp, as the only surviving trustee, stand responsible for the due execution of said trust, as respects the security of the lands and tenements so conveyed as aforesaid; and whereas William Sharp, Abner Beebe, Thomas Hunt and Amos Valintine Elders & Deacons of the Church aforesaid have been duly appointed, by the Church aforesaid, to receive a declaration of trust in due form of law, touching all and singular the premises aforesaid, of the uses and purposes for which the same are now held, and intended forever hereafter to be held: - Know therefore Know ye; That in consideration of the premises, and for the purpose of securing the true and faithful application of the property aforesaid, real and personal, to the sole use and benefit of the Church aforesaid, I the said Nathan Sharp surviving trustee do hereby acknowledge and declare that my name with others as aforesaid is made use of in the aforesaid several deeds or releases, in trust, for the joint use, benefit and behoof of the Church aforesaid, whose names are subscribed to the aforesaid Covenant or Constetution, and to be and remain forever subject to the management, control and disposition of the trustees, for the time being, of the aforesaid Church, in the manner & for the purposes expressed in the aforesaid Covenant or Constitution as ratified & confirmed on the 21st day of December A.D. 1829. And furthermore, I the said Nathan Sharp, for myself my heirs and assigns do hereby covenant & and with the aforesaid Elders and Deacons of the Church, and their successors in Eldership and Deaconship, that it shall and may be lawful for the Trustees of the said Church, for the time being, from time to time, to ask, demand, receive and take, for the uses and purposes aforesaid, all and singular the rents, issues and profits of all and every the tenements and premises aforesaid, and to use all lawful means in my name as connected with others, or in the name of my heirs, executors, administrators or assigns to secure & maintain the quiet and peaceable enjoyment of the said tenements & premises and every part thereof, and also to manage, use, and appropriate all the personal interest and property aforesaid to the uses and purposes aforesaid, without let, molestation or hindrance of me or my heirs, or of any person claiming from, with, by or under me, or by means of any act, matter or thing done or committed or to be done or committed by me, my heirs or assigns, in any wise touching or concerning the said tenements and premises. And further, that the said property so to me conveyed and by me

held

held in trust as aforesaid, both real and personal shall be wholly applied to the use and for the benefit of the Church aforesaid, according to the usages, rules and direction of the Eldership of said Church and in conformity to the stipulations of the Covenant or Constitution of the Church aforesaid, and for no other use or purpose whatever: and, that any deeds, conveyances, sales or transfers necessary to carry into effect and secure said uses to the objects aforesaid I will execute and make at any time and in any form required.

In witness whereof I have hereunto set my hand and affixed my seal this 18th day of March A.D. 1830.

In presence of
Richard M'Nemar
Matthew Houston.

Nathan Sharp [L.S.]

(8)

SERIES A.
BOX 100

[A. 1137]

Daniel Boyd &
Ithamar Johnson
Trustees &c
vs
Nathan Sharp
William Sharp &
C. & J. Bates

In Chancery

A compromise and settlement of the subject matter of this suit having been made between the complainants and Nathan Sharp the principal defendant, as per an agreement entered into and signed by the Counsel for complainants and defendants, and said settlement having been fully ~~completed~~ consummated by complainants and defendant Nathan Sharp: It is therefore ordered adjudged and decreed by the Court, that the bill of the Complainants in this Cause be and the same is hereby dismissed: And by consent of the parties by their Counsel it is further ordered and decreed that the Complainants pay their own Costs, and the defendants pay their own Costs. And it is further ordered by consent as aforesaid, that this decree shall not prejudice affect or in anywise bar the rights of the Complainants or their Successors in office if any they have, or shall have, to prosecute a suit at Law or in Chancery against the said William Sharp to compel a release or Conveyance of the Real estate Conveyed to said William Sharp and Abner Bedle in Trust by ~~Daniel Boyd~~ for the sole and exclusive use of the said United Society at Union Village, by Daniel Boyd by deed bearing date the Seventeenth day of August in the year of our Lord eighteen hundred and twenty nine, that matter not having been embraced in this bill, and forming no part of the settlement or Compromise.

By the Court:

Henry Baldwin. S. A. J.

Tenn Com Pleas

Daniel Boyd &
Ithaman Johnson
Trustees &c
vs
In Chy
Nathan Sharp
William Sharp &
C. & J. Bates

SERIES A.
BOX 100

Decree

Filed 18th April 1857
J. H. Wilds Clk

[Ac. 1137]

The State of Ohio
Warren County } ss.

To the Sheriff of the County of Hamilton Greeting

We Command you that you Summon Nathan Sharp Caleb Bates and Jonathan Bates, to appear before the Judges of our Court of Common Pleas at the Court House in our said county of Warren on the fourth to answer a petition in Chancery exhibited against them by Daniel Boyd and Thomas Johnson Partners &c. and this they shall in no wise omit under the penalty of one thousand dollars: And have then there this writ.

Witness the Honorable Benjamin Hinkson President Judge of our said Court at the Court House this tenth day of March A.D. 1836.

J. H. Wilds Clk

[A. 1137]

The State of Ohio
Warren County ss

To the Sheriff of the County of Warren Greeting.

We command you that you Summon William Sharp to appear before the Judges of our Court of Commonpleas at the Court House forthwith, to answer a petition in Chancery exhibited against Nathan Sharp, Caleb Bates, Jonathan Bates and William Sharp; and this he shall in no wise omit under the penalty of One thousand dollars, and have then there this writ.

Witness the Honorable Benjamin Hitchcock President Judge of our said Court at the Court House, this tenth day of March A.D. 1836

J. G. Wilds Clk

I acknowledge service of this writ March 15th 1836

William Sharp

Warren Circuit Court
July Term 1836.

Daniel Boyd et al.
vs
William Sharpe et al.

Bill in Chancery to Warren county

1836 March 19th
Served the defendant
W. Sharpe Copy in
hand and a written
acknowledgment

Service	35
1 Copy	20
Mileage	40
	1.95

W Russell Shff

SEP 100

Seventh Vol.

[No. 1137]

Know all men by these presents that we Nathan Sharp, principal, and Wright Smith & George C. Miller. Security of the County of Hamilton in the State of Ohio are held and firmly bound unto Daniel Boyd and Ithamer Johnson Trustees of the United Society of Believers, called Shakers, residing at Union Village in the County of Warren in the State aforesaid in the penal sum of Twenty Thousand Dollars for which payment Well and truly to be made we bind ourselves, and each of us, our heirs executors and administrators and every of them firmly by these presents, — Sealed with Our Seals and dated this twelfth day of March in the Year of Our Lord, Eighteen Hundred and thirty Six.

The Condition of the above Obligation is such, that whereas the said Daniel Boyd and Ithamer Johnson Trustees as aforesaid sued out of the Court of Common Pleas within and for the County of Warren aforesaid sitting as a court of Chancery, a Writ of "Ne Exeat" against the above bounden Nathan Sharp & others, dated at Lebanon in said County of Warren on the Tenth day of March in the year aforesaid. Now know ye that if the above bounden Nathan Sharp shall remain within the limits of the said State of Ohio and not depart therefrom without the leave of said Court, according to the tenor and effect of said Writ, then this Obligation to be void, and of no effect; Otherwise to be, and remain in full force and virtue.

Nathan Sharp [Seal]

Wright Smith [Seal]

Geo. C. Miller [Seal]

War. Com. Pleas
February term 1836

David Boyd & Thamer
Johnson Justices &c
} writ of
Nathan Sharp et al
ne exeat

The Court have directed that security be given by Nathan Sharp in the sum of twenty thousand dollars - March 10th 1836

J. G. Wilds Clk

I have executed this writ agreeably to the command thereof. the Defendant Nathan Sharp having given Bond as required with Wright Smith and Geo. C. Miller Sureties which is herewith attached. March 12. 1836.

A. Goodrich Shff.
83X 100 Ham. Co.

Shff fees $1.45.

Sureties ally

Sum . . . 35.
Writ . . . 10.
Bond . . . 50.
D. exf'd . 50.
Shff fees $1.45

The State of Ohio
Warren County } To the Sheriff of our County of Hamilton Greeting Whereas it is represented to us in our Court of Common Pleas within for the County of Warren aforesaid sitting in Chancery on the part of Daniel Boyd & Others Eldership Trustees of the United Society of Believers called Shakers residing at Union Village in the County of Warren aforesaid Complainants & Nathan Sharp William Sharp Caleb Bates & Jonathan Bates defendants among other things an Subpoena that the defendant Nathan Sharp who was heretofore appointed Trustee & agent of said Society has recently withdrawn from said Society & taken with him money & other property of said Society to a large amount & designs quickly to depart without the limits of this State We therefore hereby command you without delay to cause the said Nathan Sharp personally to come before you & give sufficient security in the sum of twenty thousand dollars that he the said Nathan Sharp will not depart beyond the limits of this State without the leave of our said Court And in case the said Nathan Sharp shall refuse to give such security then you are to commit him to the Jail of our said County of Warren there to be kept in safe custody until he shall do it of his own accord or be otherwise legally discharged & when you have taken such security you are forthwith to make & return a certificate thereof to us in our said Court of Chancery at Lebanon in Warren County aforesaid & have then there this writ ——

Witness the Honorable Benjamin Hinkson President Judge of our said Court of Common Pleas at Lebanon this 16th day of March A.D. 1836

J. C. Wilds Clk

[Ac. 1137]

The Shaker Society
ads
Gist Ballance &c.

Ch'd on appeal from a decree of the Lincoln Circuit Court

This suit was brought by Charles Ballance who had been a member of the Shaker Society but had left it. It was commenced in the Mercer Circuit Court, and afterward upon his application removed to Lincoln for trial where it was determined unfavorably to the complainants by whom the appeal is prosecuted. The Bill sets up the Covenant which united together the members of the Shaker Society, at Pleasant Hill in Mercer County, alledges its subscription as a party Compl't Ballance and charges various breaches of its provisions by those intrusted with the administration of the affairs of the Society, and concludes by praying that it may be rescinded, that the Association may be dissolved, and that the joint funds which the Covenant purports to create may be divided and amongst those entitled to distribution according to their respective interests. It made the Society a defendant and called upon it through certain persons Styles its "Trustees and Elders" to answer — Gist, Banta, Lasseen and Burnett also Ex Shakers, but claiming still to be members of the Society, and to be authorised to make themselves parties to the suit, came in and filed answers in the nature of Cross bills, and sought for themselves respectively the same relief asked for by Ballance making the same defendants with some others in whom the legal title to a portion of the property was alledged to reside — The trustees (Withito and Bryan) answered for themselves, and for Body of the Society Specially named in the Bill as defendants — They deny all the obligations of the original and several Cross bills which charge departures from the Original terms and principles of the Covenants, after the existance of the Church at Pleasant Hill, the place of its first establishment, Organized and proceeding in all its operations after precisely the same system instituted by the Covenant when first adopted in the year 1811, and they rely upon the provisions of that Covenant and especially the 7th Section as presenting an insuperable bar to the relief sought by the Complt's — Before the trial in the Circuit Court, accommodation of the matters in controversy took place between all the parties concerned save the Complt's Gist and Banta — as to them

and then only it was tried and determined in that Court – A great portion of the mass of testimony in the record is taken up in efforts on the part of Pallanee to prove a departure from the terms originally agreed upon for the government of the Society so far as he was concerned. Gass and Panta place no reliance upon any such departure so far as it regards themselves – at all events they have adduced no testimony of its existance, and have confined themselves as does to the extent and value of the property and sums dedicated by them to the Society, and contend that by the Covenant itself they are entitled to have partition of their shares of the property and to an account for their services – Stripped of so much as relates to the connection between Pallanee and the Society, the record as to matters of fact is narrowed down to a small compass – On the part of the Society every material affirmative fact alledged in the Answer is fully sustained by the proof.

The depositions of Meacham and Betts taken in the State of New York, place the motives which led to the execution of the Covenant; the circumstances attending it – its design and the agency of Gass and Panta in its production beyond all doubt – They are no parties to the Covenant and their testimony if it needed confirmation is amply corroborated by the depositions McNemar, Elisha Thomas and others. That the Covenant in question was subscribed by Gass and Panta, knowing or at least fully believing that it contained a clause of the import for which we contend, that they legred it supposing it would have that effect, that they so understood it, and rejoiced in it for years afterwards, and exhorted others to do the same. No man can read this record and intertain a single doubt. As little can it be doubted that the Society is yet in existance at the same place, and proceeding after the same manner that it was constituted by the Covenant of 1814. – Can the present Complainants be released from this solemn engagement which they have thus knowingly & deliberately entered into – I insist most confidently that they cannot – But before inquiring more particularly into the character of this Covenant there is a preliminary question which in my judgment should all others fail must prove fatal to this claim as it now stands – It is the question of proper parties: Are the Complainants in a position to ask the interposition of the Court? Do they stand in an attitude which will authorise the Court to act upon the property which they are in pursuit of? The Covenant by which this property was consecrated is

made part of the Bill and is admitted in the Answer. It shows upon its face the signatures of a large number of persons, at the same time with the Complts. equally interested with them. It is not suggested that they are dead, or that their interest has terminated — the fact is otherwise. Are they not according to any and every principle of Chancery practice absolutely necessary parties to any proceedings effecting that Covenant interest, and especially to one designed expressly to dissolve it and distribute it in certain portions amongst all those interested in it. Surely it is unnecessary to cite the Court to authorities in support of the rule which requires all who signed this Covenant, to be made parties to this proceeding — They are to be found in every book of Chancery practice. Cooper in his treatise upon equity page 34 lays down the rule in these words, "All persons who are legally or beneficially interested in the subject matter or result of the suit are necessary parties." In Johnsons Chancery reports titles "Practice & Parties" numerous cases will be found illustrating and establishing the same principle. It is one of almost every days occurrence in the practice of this Country — Why is it that in Bills of Partition between partners and joint tenants, or dependants all must be made parties either as complainants or dependants — Why in Bills for the distribution of an intestates estate all the distributees are held to be necessary — Why but because they are interested in the subject matter, and result of the suit — And are not all the signers to this Covenant, or their representatives just as much interested in the subject matter and result of this suit as Less and Banta — Most assuredly they are — they are interested to get their own shares, and to prevent Less and Banta from getting more than they are entitled to — No division which could be made without notice to them, would bind them — they are not made parties by the Bill and most certainly they are not to in any sense of that word, or according to any regular practice in Chancery, unless the act of the Legislature passed on the 11 day of February 1828 1st session acts of 1827 page 137 can be construed to have that effect — I feel the utmost confidence, that cases like the present were never intended to be embraced by that acts, and that in no view which can be taken of it, any such construction can possibly be given to it. But that if its language or intent does authorise an application to cases like the present, it is obviously and palpably

unconstitutional, and can never be inforced without doing violence to that instrument. That act provides a remedy for any person having any demand exceeding the sum of Fifty dollars founded on any contract expreſs or implied against any of the communities of people commonly called Shakers living together, and holding their property in common, to commence and prosecute suits, obtain decrees and have execution against any such Community, by the name or description by which said Community is commonly known, without naming or designating the individuals of such Community, or serving process on them except as hereafter directed.— The 2nd section prescribes the form of service which in such cases shall be deemed sufficient, by posting a copy of the process on the door of the Meeting House delivering one to any known Member of the Society and reading it aloud at the door of some one of their dwellings— These things returned by the officer are to be considered as constituting good service of process on the Whole Community— By the 4th section the rights of former members of the Community are to be settled according to the Covenants and Usages of the Society and the general laws of the land— Now this act does not embrace cases like the present— Because Gaſt and Rantz have no contract expreſs or implied with the Shaker Community— But to set aside and vacate a contract and to be placed in statu quo— Again they pretend to no contract with the Community as such after its formation, they sue for no such, but they sue on the Contract or articles of association, which formed the Community, and that not to enforce, but to rescind and set those articles aside— Their case is then evidently not embraced by the act, but must rest on principles of Equity applicable to the rescission of contracts previous to the passage of this act— But admitting it to have been passed with the intention of Comprehending such cases as the present, can it constitutionally with the Constitution be enforced by the Courts of the Country— I contend that it cannot, for the following reasons. Because it breaks down that equality of rights which the Constitution was intended to preserve and makes a discrimination between Citizens— That instrument declares "that all persons when they form a social Compact are equal, and that no man or set of men are entitled to separate & exclusive emoluments or privileges" — that is civil privileges, because political privileges are unequal as in case of impost &c.— Again that instrument declares to all persons under it "the enjoyment of life, liberty and property"

Can this be true if property is taken away by ex parte Judgments procured perhaps by fraud and misrepresentation, And again, "All courts shall be open, and every person for an injury done him in his lands, goods person or reputation shall have remedy by the due course of law". Now if the Courts are to proceed without notice to all of the parties Concerned, are they not as to those parties effectually shut up. However is not the due course of law preserved that which required the then accustomed Notice, and prohibited Courts from proceeding where such notice was not given. It will be recollected that the Shaker Society is not an incorporated body if it was, it might be otherwise. This act does not profess to incorporate such Societies — Corporate rights could not be forced upon them, without their consent. They have asked for none — They are to be respected as other Citizens entitled to the same rights and privileges and no more — The rules which regulate proceedings against Corporations cannot apply to them. Would this be a good service of process against all the members of a large an incorporated Mercantile or Manufacturing Concern, at the suit of one of the partners to have a partition and account of the Capital Stock & his share of the profits — Surely not. In any view which I can take of this act, it is in regard to all those persons who are joint parties to this compact and whose rights are to be affected by this proceeding, without notice actual or constructive an unconstitutional attempt to deviate from the due course of law". It has been so decided by the only Court, in the State before whom the question has been made, and I cannot for a moment doubt that if necessary it will be so adjudged in this case by this Court. This act contemplates the continued existance of such Societies after suits, Judgments and decrees against them, and subjects them to Executions, the ordinary consequences of such proceedings. But if this suit in its present form is to prevail, their existance as communities will be terminated whenever a decree shall be rendered against them and nothing will be left upon which an execution can operate — such a result was manifestly not within the intendment of the Legislature.

If the foregoing view of the question as to proper parties be correct, the complainants are in no condition to ask the interposition of this Court in their favour — not one tenth of the subscribers to that Covenant are parties to this suit by the allegations of the Bill or service of process. Their absence or death is not suggested, nor is any reason assigned for a failure to give them notice of this proceeding. They are just as much interested in its result as Gass and Banta themselves

But suppose this difficulty to be removed and that the complt. had done well all that it was incumbent on them to do in order properly to make the question of the validity of the Covenant— Do not that question at law and in Equity against them? The whole face of the Covenant from beginning to end shews it to have been the manifest design of the parties to it to convey or bestow their property and services under it, at that they should for ever afterwards be beyond their reach, control or demand by any form of proceeding whatever— In the 5th and 7th sections especially the most comprehensive and appositive language is employed to accomplish that particular purpose— The parol proof shows abundantly that such was the express design of all concerned— that it had been long cherished, and much discussed and that the present complainants had no inconsiderable agency in bringing it to pass, and affirmed for years after it had been done that such in fact was its effect— Can they now be released from it? Reposing upon their engagements and doubtless greatly influenced by his example and persuasion many others have devoted their property and services to the same end— They are now at Pleasant Hill abiding by that devotion, and fulfilling as well they may, all the obligations which it imposes— They are resisting his desolation and insisting upon maintaining the integrity inviolability of the fund so created according to its original appropriation— Why shall the Complainants, after contributing to bring upon others this state of things, now be absolved themselves from its consequences? And that too when they have left Pleasant Hill voluntarily and of their own accord resumed the privileges of its protection and support— The Statutes of Mortmain, and all such restrictions of the English law passed away with the American Revolution as contrary to the Spirit of our government— But their very existence proves one principle of the Common Law, and it is one of the first declared in our constitution— The undisputed right of every man to possess his estate as he shall choose, subject only to the restriction sic utere tuo, ut alien one non lede— Does it not then clearly follow that any one may devote his estate to a specific purpose irrevocably, by the express terms of the surrender and is there any power in the government which will enable him to recall it— None unless the terms of the devotion have been violated or it has been superinduced by deception or fraud— We stand upon the defensive, and demand that the

restrictions upon natural right which forbid the making of such a Contract as this shall be shewn — The owners Probandi lies upon our adversaries. There is nothing unlawful or forbidden in the objects of the devotion, or the operations of the Society, On the contrary both are Commendable — The public does not complain, the complainants are those who aided in its institution — They are not Corporators neither are they joint tenants, and cannot therefore, be governed by the rules which regulate such interests — If they shall fail to keep up the Church properly by a regular succession and to do within themselves, the proper Acts to effect it, it will be their own misfortune. But that constitutes no good reason, why they should not be allowed to engage to do so — as well might it be said that no partnership of an indefinite duration can be formed without an act of incorporation, because the partners might not be able to keep up a regular succession. That would be their misfortune, but to form such a partnership would be their natural right — This Covenant is in my judgment like an instrument of Copartnership of a peculiar kind, which furnishes the terms of its own dissolution. — It is certainly Competent for partners in their articles of Copartnership to provide in case of a dissolution, against withdrawing any of the Capital invested, or its proffits by any withdrawing member — although any of the partners may withdraw themselves whenever they shall think proper to do so — I cannot resist the conviction, that such is the construction which must be given to the 7th section of this covenant. No authority has been shewn to the contrary, none can be produced I am persuaded. — If so, the decision of this Court must be in accordance with the decree of the Circuit Court — This Society is distinguished by its industry, temperance, and hospitality, by its mechanical skill, and by the humble, silent, and unobtrusive deportment of its members — Nothing unfriendly to the government, or disturbing to the community is known of it has at any time shown itself amongst them — Let them stand and fulfil as well they may the destiny allotted to them by the great ruler of the Universe —

Cunningham

SHAKER COLLECTION

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